

Statement  
Select Board  
July 27, 2020

Following several months of attempting to negotiate an agreement with the defendants to reopen access to the unpaved portion of Estabrook Road, the Select Board had no alternative other than to file a Motion for Preliminary Injunction with the Land Court to preserve the public's right of access pending completion of litigation. The Select Board also asked the court for a status conference to explore options for a prompt, final resolution of the lawsuit.

The judge held a hearing on the Town's Motion on July 20<sup>th</sup>. On July 23<sup>rd</sup>, he issued an order granting the Town's Motion for Preliminary Injunction. The Order prohibits the defendants "from gating, closing, blocking, or otherwise interfering with public access to Estabrook Road, Estabrook Trail, or any part thereof," and "from maintaining or posting any signage on or near said Estabrook Trail designed, intended, or tending to have the effect of discouraging or prohibiting public access to said Estabrook Road or Estabrook Trail." The court's full order is posted on the Town's website.

In reaching his decision, the judge concluded that the Town's central claim in the litigation, that the public retains a right of access over Estabrook Road, "has a sufficient likelihood of success on the merits," and that the "deprivation of long-standing public access to a hiking trail [is] a harm that is irreparable to the Town and to the public interest." The judge also acknowledged that the Town was acting on behalf of the public interest, not simply on its own behalf.

The judge, after reviewing the defendants' submissions and walking much of Estabrook Trail himself from the closed entrance north, rejected the defendants' argument that the COVID-19 pandemic justified their resort to self-help to close public access. The judge also rejected defendants' argument that the public had sufficient access to Estabrook Woods and the trail from other locations in Concord, and found instead that the public interest is irreparably harmed by the loss of the particular access closed by the defendants.

The Court Order also adopted the Town's proposal to post signs on the trail regarding appropriate use and public safety. The Town first proposed such signage to the defendants shortly after the defendants closed off access in early April, but the defendants were not satisfied.

Consistent with the Town's proposal, as adopted by the Court, the Town asks the public to continue to protect the efforts the Town has made to preserve public access by treating Estabrook Road and the abutting private properties respectfully and to abide by appropriate masking and social distancing.

Accordingly, signs have been posted at and near the trail that read as follows:

**NOTICE BY THE TOWN OF CONCORD:**

The public may use this path subject to the posted rules. All dogs are to be leashed at all times while on Estabrook Road. Trail users are to remain on the path and respect the property and privacy of the surrounding landowners. In accordance with the Concord Board of Health order, you must wear a mask if you are unable to maintain a distance of at least six feet from others. **You may be subject to civil and criminal penalties for violation of these requirements.**

Although the Court has not yet made a final decision on the merits of the case, we have been advised by the Court that a trial will be scheduled this fall and we look forward to prompt resolution of the case. In the meantime, the Town is gratified that the Court has recognized the strength of the Town's claim and issued an order that permits the public to continue to access the southern entrance to the unpaved portion of Estabrook Road.